

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

&

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

CRP.No. 681 of 2003(B)

(AGAINST THE JUDGMENT DTD. 20/01/2003 IN RCA.14/2001 OF I ADDL.
RENT CONTROL APPELLATE AUTHORITY, TRIVANDRUM WHICH CONFIRMED
THE ORDER IN RCP.38/2000 OF THE ADDITIONAL RENT CONTROL COURT,
TRIVANDRUM.
.....

PETITIONER/RESPONDENT/COUNTER PETITIONER:

R.SOMACHANDRAN, VARUVILAKATHU HOUSE,
KARUNGANOOR MURI, KOWDIAR VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.S.GOPAKUMARAN NAIR.

RESPONDENTS/APPELLANTS/PETITIONERS:

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1. RAJASEKHAR, ASSARIMAR THERUVU,
MANAVALAKURICHI, KALKULAM TALUK,
KANYAKUMARI.
 2. AMRITHANAYAKOM (AMRITHAM),
CHEKKITTAVILA VEEDU,
KURUNGANOOR MURI, KOWDIAR VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SMT.VIDYA RAVI,
ADV. SRI R.S.KALKURA.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 05/09/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

prv.

ORDER ON C.M.P. NO. 1666/2003 IN C.R.P. NO. 681/2003

DISMISSED

SD/- K. BALAKRISHNAN NAIR, JUDGE,

05/09/2007.

SD/- T.R.RAMACHANDRAN NAIR, JUDGE.

//TRUE COPY//

prv.

**K.BALAKRISHNAN NAIR,
&
T.R.RAMACHANDRAN NAIR, JJ.**

**=====
CRP.No. 681 of 2003-B.
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Dated this the 5th day of September, 2007.

O R D E R

Balakrishnan Nair, J.

The tenant is the revision petitioner. The first respondent herein is the landlord. The rent control petition was filed under Sections 11(2)(b) and 11 (3) of the Kerala Buildings (Lease & Rent Control) Act (hereinafter referred to as 'the Act'). The Rent Controller allowed the petition in part ordering eviction under Section 11(2)(b). The landlord appealed. In appeal, the appellate authority allowed the prayer of the landlord under Sec.11(3) also. Hence this revision by the tenant challenging the appellate judgment.

2. The revision petitioner attacks the finding of the appellate authority regarding the second limb of the second proviso to Section 11(3) of the Act. The authorities below concurrently found that the tenant is depending upon the income derived from the petition schedule building for his livelihood. The Rent Controller found that there is no suitable building available in the locality. Therefore the protection under the second proviso to Sec.11(3) was extended to the tenant. But, the appellate authority reversed the said finding holding that the burden to prove the non-availability of

alternative accommodation in the locality shifted to the tenant and he has failed to discharge it.

3. The learned counsel for the revision petitioner attacks the said finding of the Rent Controller on the second limb of the second proviso to Section 11(3). According to him, the said finding is illegal, improper and irregular and liable to be interfered with under Section 20 of the Act. The learned counsel for the landlord on the other hand submitted that, if there is any defect in the finding of the appellate authority the matter may be remitted for adducing fresh evidence regarding alternative accommodation and for fresh decision in accordance with the evidence adduced.

4. We prima facie felt that the appellate authority misread the evidence and held that the tenant has failed to discharge his burden . So, we went through the pleadings and evidence on record concerning the second limb of second proviso to Section 11(3). Normally, the appellate authority is the final court of fact and this court is not expected to disturb the findings of fact. But we notice that the Full Bench of this Court in *Francis v. Sreedevi Varassiar* (2003(2) KLT 230) referring to the decision of the Apex Court in *Nalakath Sainuddin v. Koorikadan Sulaiman* (2002(6) SCC 1) held that the scope of revisional jurisdiction of this Court has not to be unnecessarily limited on the basis of technicalities. It was further held that the court has to consider and decide the matter as the justice of cause may demand.

5. We notice that in the Rent Control Petition there is no statement regarding the alternative accommodation available for the tenant to shift his business. In the deposition of PW1 he has not stated anything about the alternative accommodation. On the contrary the tenant who was examined as CPW2 has asserted that there is no suitable alternative accommodation to which he can shift his business. In his chief he has categorically stated so. In the cross-examination also he has denied the suggestion about the alternative accommodation available on the way to Mundekkunnam and Ambalamedu. The statement of CPW2 regarding the non-availability of alternative accommodation stands unshaken notwithstanding the cross-examination of the landlord. The appellate authority found fault with the tenant for not taking out a commission to show that vacant rooms are not available in the locality. In other words he was called upon to prove negatively that no suitable premises were available in the locality. In the absence of any whisper regarding alternative accommodation in the pleadings of the landlord or in his deposition, we feel that the tenant has discharged his burden in view of his deposition, which was unshaken in the cross-examination. So the finding of the appellate authority that the tenant has not discharged his burden, is irregular, illegal and improper. Therefore, we hold that the tenant is entitled to get the protection of the second proviso to Sec.11(3).

6. The learned counsel for the landlord made a fervent plea to

remit the matter to the Rent Controller and to allow him to adduce evidence regarding availability of alternative accommodation, suitable for the tenant. Remand cannot be ordered to cure the lacuna in the case of the landlord and the same will result in injustice to the tenant who is found to be entitled to get the benefit of the second proviso. Further, now, at this distance of time it may not be possible to find out the existence of alternative accommodation, which was available during the pendency of the Rent Control Petition.

In the result, the Rent Control Revision is allowed and the impugned appellate judgment is set aside. No costs.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Kvs/-